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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. —

IVAN C. MCLEOD, REGIONAL DIRECTOR OF THE SECOND REGION OF THE NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

GENERAL ELECTRIC COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of Ivan C. McLeod, Regional Director of the National Labor Relations Board, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case, which was entered on September 8, 1966.

OPINIONS BELOW

The opinions of the court of appeals (App. A, *infra*, pp. 20–25) and of the district court (App. B, *infra*, pp. 27–67) are not yet officially reported.

JURISDICTION

The judgment of the court of appeals (App. A, *infra*, p. 26) was entered on September 8, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Section 10(j) of the National Labor Relations Act authorizes the Labor Board, upon the issuance of an unfair labor practice complaint, to bring a federal district court proceeding for "appropriate temporary relief or restraining order" pending adjudication of the complaint by the Board, and the court in such a proceeding is empowered to grant such relief as it "deems just and proper." The question presented is whether the Board is entitled to an injunction where it shows (1) that there is reasonable cause to believe the Act has been violated and (2) that the impact on the public interest will be substantial if relief is withheld.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth in App. C, *infra*, pp. 68–70.

STATEMENT

On July 13, 1966, pursuant to charges filed by the International Union of Electrical, Radio and Machine Workers, AFL–CIO (IUE), the General Counsel of the National Labor Relations Board, through its Regional Director (petitioner), issued a complaint against General Electric Company alleging that the company was violating Section 8(a) (5) and (1) of the Act by refusing to recognize and meet with an IUE bargaining committee that included individuals who were members of other unions with which the company also has collective bargaining agreements

(R. 642a; 17a–24a).[1] Two days later, the Regional Director, on behalf of the Board, brought a proceeding under Section 10(j) of the Act for an injunction to restrain the allegedly unlawful conduct pending final Board adjudication of the complaint (R. 642a; 7a–16a). The United States District Court for the Southern District of New York (Frankel, J.), after an evidentiary hearing, granted the injunction sought by the Board. The Court of Appeals for the Second Circuit reversed. On September 21, 1966, Mr. Justice Harlan stayed execution of the court of appeals' judgment pending the filing of a petition for a writ of certiorari by the Regional Director and its disposition by this Court, provided the petition was filed by October 24, 1966.[2]

A. THE FACTS

General Electric Company—a major corporation engaged in the manufacture and sale of electrical, electronic, and other products, including many for the national defense and atomic energy programs (R. 643a; 330a)—has about 290,000 employees, approximately one-half of whom are unionized; they are represented by some 80 unions in about 150 bargaining units (R. 643a; 330a–331a). IUE (or its affiliated locals) is certified in 65 to 70 units, representing about 80,000 employees. Notwithstanding the individual unit certifications, the company customarily bargains for a national contract covering all IUE units (R.

[1] "R." references are to the Appendix to General Electric's brief in the court of appeals.

[2] Mr. Justice Harlan's memorandum opinion on the stay application is printed as App. D, *infra*, pp. 71–73.

643a–644a; 331a–335a). For these national negotiations, IUE elects a conference board (composed of representatives from both the international and the local unions) which in turn elects 10 or 15 members to a negotiating committee. In addition to its elected members, this committee has normally included IUE's general counsel, its research director, and other technicians, who participate in the discussion both at and away from the bargaining table but have no voting rights (R. 644a; 44a, 58a, 158a–162a).

The company's practice is to centralize and coordinate its national and local bargaining activities. This is facilitated by the fact that most of its collective bargaining agreements have the same expiration date. The company formulates proposals for presentation to unions like IUE with which it bargains nationally,[3] explains them to its local employee-relations managers, and then presents them in the national negotiations. Soon afterwards, the company's local managers present the same proposals to unions with which the company bargains only on a local basis. At about the same time, usually before the unions have responded, the company publicizes the uniform proposals to the employees. (R. 645a–646a; 69a–70a, 332a, 335a–337a, 353a–354a, 363a–366a, 378a–379a, 405a–408a.)

IUE and other unions representing General Electric employees decided that the company's bargaining

[3] In addition to IUE, the company bargains on a national basis with the United Electrical, Radio and Machine Workers, and the Pattern Makers' League (R. 643a; 334a).

strategy compelled them to adopt a coordinated approach to bargaining for the new contracts that would be negotiated in 1966. In October 1965, the president of the AFL–CIO called a meeting of unions having contracts with the company. The unions agreed to cooperate on research, education, publicity, and the evolution of national goals on wages and working conditions, and to that end formed a committee on collective bargaining and a steering committee. While it was understood that each union retained ultimate control of its own bargaining decisions, it was expected that each would consult with the others if it intended to deviate from the common goals. (R. 642a–653a; 56a–57a, 80a–81a, 132a–133a, 145a–146a, 148a–152a, 167a, 178a–180a, 187a, 193a, 199a–200a, 278a–279a, 347a–351a, 494a–496a, 646a–647a, 652a–653a.)

The current collective bargaining agreement between General Electric and IUE was due to expire on October 2, 1966. The agreement provided for negotiations for a new contract to begin in August 1966. In accordance with past practice, the parties agreed to hold "pre-negotiating" meetings in late 1965 or early 1966 (R. 653a–654a; 429a, 492a). Between November 1965 and March 1966, the union steering committee several times requested the company to discuss with the unions, jointly and informally, matters on which the company usually made uniform offers. General Electric responded that it would not engage in multi-union, company-wide bargaining (R. 653a–

658a, 424a–427a, 428a–436a, 440a–448a, 452a–453a, 456a–459a, 653a–657a). On April 13, 1966, IUE wrote the company that it would not "pursue the matter any further and will abandon any suggestions for any such joint meeting or for joint discussions" (R. 659a; 460a–462a).[4] General Electric and IUE then agreed to begin preliminary contract discussions on May 4, 1966 (R. 658a–659a; 48a–49a, 463a–464a).

In preparation for the May 4 meeting, IUE added to its own negotiating committee a representative from each of the seven other unions which, with IUE, had composed the committee on collective bargaining (*supra*, p. 5). The declared reason for including these additional members was to give IUE the benefit of their experience in negotiating with the company and to supply the inter-union communication necessary to avoid company "whipsawing" practices. As thus constituted, the committee was to bargain solely for IUE. The prior approval of the other unions was not a precondition to an IUE agreement. As in the case of the other non-elected members of the IUE negotiating committee, the seven could participate in discussions but could not vote. (R. 659a; 46a–50a, 54a–55a, 120a–122a, 133a–134a, 141a–142a, 158a, 160a–162a, 169a, 202a–203a, 205a, 235a–236a, 289a.)

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[4] Several days later, to be sure, one of IUE's local unions notified its members that the "unity resolution" was still in effect (R. 569a). This isolated statement of a single local obviously cannot be taken as an authoritative statement of IUE's policy (App. B, *infra*, pp. 38–39).

When the IUE negotiating committee arrived at the appointed meeting place on the morning of May 4, some of the seven members from other unions were wearing lapel buttons so indicating. The company's negotiating committee, learning of this before it entered the meeting room, deemed the inclusion of the seven on the IUE bargaining team a breach of faith. The company committee then proceeded to the meeting room, where its spokesman advised the IUE committee that the company would not be a party to "coalition bargaining." Each of the non-IUE union members stated that he was appearing as a member of the IUE committee and the chairman of the IUE committee and IUE's general counsel assured the company that the committee was bargaining only for IUE, but the company walked out, inviting IUE to return at 2 p.m. without anyone from other unions. Later in the morning, IUE sent a letter to the company stating that the union committee meant to bargain solely and exclusively for the IUE, insisting that the union had a "right to choose the representatives of [its] own Committee," and announcing its readiness to resume the meeting (R. 659a–661a; 50a–54a, 255a, 340a–341a). The company adhered to its position, and on May 9 the union filed the unfair labor practice charge giving rise to this litigation.[5]

[5] The company filed its own unfair labor practice charge on June 8. The General Counsel of the Board, however, found the company's charge to be without merit.

B. THE DISTRICT COURT'S DECISION

The district court found that the record did not support General Electric's contention that IUE and the seven other unions "were bent on a program of 'joint' or 'multi-union bargaining'" or that "they were 'locked in' to an understanding that none would reach an agreement with [the company] unless all did" (App. B, *infra*, pp. 55, 39). Therefore, the court found, the company's refusal to meet with the IUE could be justified only on the premise "that representatives from other unions inevitably bring the infection of unlawful or non-mandatory joint bargaining"—and it found "sound reason, and substantial precedent,"[6] for rejecting such an assumption (App. B, *infra*, p. 57).[7] The court concluded that there was reasonable cause to believe that the Board would ultimately find that the company's refusal to meet with the IUE committee on and after May 4 was unlawful under the Act (App. B, *infra*, pp. 63–64, 48). It further found that this was an appropriate case for the issuance of a temporary injunction, reasoning (App. B, *infra*, pp. 61–62):

[6] *Standard Oil Co.* v. *National Labor Relations Board*, 322 F. 2d 40 (C.A. 6); *American Radiator & Standard Sanitary Corp.*, 155 N.L.R.B. No. 69, 60 L.R.R.M. 1385 (App. B, *infra*, p. 57). In *American Radiator*, which is now pending on appeal before the Court of Appeals for the Sixth Circuit, the Board had held that a union could properly add individuals from other unions to its bargaining team.

[7] As the court pointed out (App. B, *infra*, p. 60): "The Company's walkout of May 4, taken in the best possible light, was inexcusably premature. If the IUE was ever to press for 'multi-union bargaining' or to demonstrate that it was unlawfully 'locked in,' either or both possibilities could only have materialized 'sometime down the bargaining road.' [The company's] asserted fears were never put to the test because it stopped and got off the road before the journey started."

> * * * [T]he remedy of Section 10(j) is surely appropriate and available when the impact upon the public interest is grave enough to justify swifter corrective action than the normal process of Board adjudication and court enforcement. The present case, involving a huge and basic enterprise with substantial impact upon the national defense and the economy generally, seems clearly to qualify.

The court held that it need not "balance the equities," since "Congress substantially struck the balance when it wrote Section 10(j), leaving particular implementations mainly for the Board's administrative judgment." It added, however, that, in any event, "the balance would not tip for [the company], for the equities are heavily on the side of [the Board]" (App. B, *infra,* p. 63).

The court entered an order restraining General Electric, pending Board adjudication of the complaint, from "failing or refusing to meet, confer and bargain collectively in good faith with * * * [IUE] by declining to meet with the selected representatives of the IUE * * * because of the presence of any representatives of other unions whom IUE * * * has invited to attend for the purpose of participation in the discussion and advising or consulting" (App. B, *infra,* p. 67).

C. THE DECISION OF THE COURT OF APPEALS

The court of appeals reversed (App. A, *infra,* pp. 20–25). Without disturbing the district court's appraisal of the probable illegality of General Electric's conduct, or questioning the lower court's balanc-

ing of the equities, the court of appeals held that the case was not an appropriate one for Section 10(j) injunctive relief. It stated (App. A, *infra*, pp. 23–24):

> The Board has not demonstrated that an injunction is necessary to preserve the status quo or to prevent any irreparable harm. Moreover, the basic legal question underlying its conduct—the very same question presented in the *American Radiator* case, 155 NLRB No. 69 (1965) in which the Board did not see fit to seek an injunction—is a difficult one to resolve and one which no court has considered. It would be more in keeping with the scheme intended by Congress to have this case * * * follow the path of Board hearing and decision on the unfair labor practice charges, rather than to short-circuit the established administrative design. The Board cannot abdicate one of the prime purposes for which it was created and thus deprive the Court of the expertise which would be available to it in reviewing the Board's holding in an enforcement proceeding. * * *

The court added that the Board, instead of seeking an injunction, should have expedited its own proceeding (App. B, *infra*, pp. 24–25).

REASONS FOR GRANTING THE WRIT

Section 10(j) of the National Labor Relations Act empowers the Labor Board, when it has filed an unfair labor practice complaint, to petition a federal district court "for appropriate temporary relief or restraining order," and provides that the court shall have jurisdiction to grant such relief "as it deems

just and proper."[8] We believe, with the district court, that the Board is entitled to relief under this section upon demonstrating to the district court's satisfaction that (1) there is reasonable cause to believe that the Act has in fact been violated, and (2) the impact upon the public interest will be substantial if the relief sought is withheld. Both conditions were clearly met here. The court of appeals did not suggest otherwise. It did not disturb the district court's finding that ultimately General Electric would probably be found to have violated the Act and it did not question the gravity of the impact upon the public interest of a strike at one of the country's largest industrial firms and military suppliers—a likely consequence if relief was denied.

Rather than disagreeing with the lower court's application of the standard, the court of appeals rejected the standard itself. The court of appeals apparently believed that in a Section 10(j) action the Board must meet all of the conventional requirements demanded of an applicant for temporary relief in a private equity action—in particular, proof that the relief sought is necessary to preserve the *status*

[8] A companion provision, Section 10(*l*), requires the Board, upon finding reasonable cause to believe that a labor organization has engaged in a secondary boycott, or certain other proscribed activity, to petition a federal district court for temporary injunctive relief. Like Section 10(j), Section 10(*l*) empowers the court "to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law." The two provisions were adopted at the same time and against the same legislative background (see pp. 14–17, *infra*).

quo and to avert irreparable injury to him.[9] The issue is thus the proper standard governing relief under Section 10(j), and we submit that this issue warrants review by this Court.

1. As Mr. Justice Harlan observed in granting a stay of the court of appeals' judgment, the issue "has not heretofore been passed upon by this Court and is of continuing importance in the proper administration of the Labor Act" (App. D, *infra*, p. 73). Proceedings under Section 10(j) and its companion provision, Section 10(*l*), in which the relevant statutory language is the same (see n. 8, *supra*), are brought frequently; in the 1965 fiscal year, for example, the Board instituted 18 actions under Section 10(j) and 227 under Section 10(*l*). N.L.R.B., 30th Ann. Report, p. 214. Plainly, the Board and the courts need to know what the correct standard is.

2. The need for clarification is the more urgent because the decision of the court of appeals in the present case adopts a novel standard and thereby injects confusion in the area. Heretofore it has generally been assumed, we believe, that the proper standard is as the Board and the district court in this case conceive it. See *Douds* v. *International Longshoremen's Association*, 147 F. Supp. 103, 113 (S.D.N.Y.), affirmed, 241 F. 2d 278, 285 (C.A. 2); *Douds* v. *International Long-*

[9] Arguably, those requirements are not met here. The Board has not been irreparably harmed, for the company's refusal to bargain does not preclude the Board from entering an appropriate unfair labor practice remedy at the conclusion of its proceeding; and the *status quo* before the controversy giving rise to this litigation—negotiating *without* union representatives affiliated with other unions—was changed by the district court's injunction.

shoremen's Association, 242 F. 2d 808, 811–812 (C.A. 2); *Brown* v. *Pacific Tel. & Tel. Co.*, 218 F. 2d 542, 544–545 (C.A. 9) (concurring opinion); *Schauffler* v. *Local 1291, International Longshoremen's Association*, 188 F. Supp. 203, 211–212 (E.D. Pa.), affirmed, 292 F. 2d 182 (C.A. 3); *Brown* v. *Local No. 17, Amalgamated Lithographers*, 180 F. Supp. 294, 307–309 (N.D. Cal.); *McLeod* v. *Local 239, International Brotherhood of Teamsters*, 179 F. Supp. 481, 488–489 (E.D. N.Y.); *Douds* v. *Anheuser-Busch, Inc.*, 99 F. Supp. 474, 477 (D.N.J.); *LeBaron* v. *Los Angeles Bldg. & Constr. Trades Council*, 84 F. Supp. 629, 637 (S.D. Cal.).

3. The view of the court of appeals—that the right of the government to equitable relief is to be tested by the same criteria applicable to private equity suits—is in conflict with well settled general principles enunciated by this Court. The Court has held that the "peaceable settlement of labor controversies * * * is a matter of public concern" and that "[c]ourts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved." *Virginian Ry.* v. *Federation*, 300 U.S. 515, 552. See, also, *Scripps-Howard Radio, Inc.* v. *Federal Communications Commission*, 316 U.S. 4, 9–11; *Yakus* v. *United States*, 321 U.S. 414, 440–441. Where a government agency is empowered to seek injunctive relief, "the standards of the public interest, not the requirements of private litigation, measure the propriety and need for injunctive relief." *Hecht Co.* v. *Bowles*, 321 U.S. 321.

See, also, *Lenroot* v. *Interstate Bakeries Corp.*, 146 F. 2d 325, 327 (C.A. 8); *Federal Trade Commission* v. *Rhodes Pharmacal Co.*, 191 F. 2d 744, 747 (C.A. 7); *Securities and Exchange Commission* v. *Torr*, 87 F. 2d 446, 450 (C.A. 2); *Shafer* v. *United States*, 229 F. 2d 124, 128 (C.A. 4).

4. Finally, we submit that the view of the court of appeals is wholly inconsistent with the purpose of Section 10(j) as clearly disclosed by the legislative history. Section 10(j), like the companion section 10(*l*), was added to the Act by the Taft-Hartley amendments in recognition that the procedures of the Board were frequently too slow "adequately to protect the public welfare," and to achieve the statutory objective of "prompt elimination of the obstructions to the free flow of commerce and encouragement of the practice and procedure of free and private collective bargaining." S. Rep. No. 105, 80th Cong., 1st Sess., p. 8; see, also, *id.*, p. 27. If Section 10(j) is to fulfill the congressional purpose of providing prompt interim relief against conditions incompatible with federal labor policy, its availability in cases like the present must be recognized. The company refused to bargain collectively, in apparent violation of the Act. If the unlawful conduct was not promptly enjoined, it was predictable that a major strike against "a huge and basic enterprise with substantial impact upon the national defense and the economy generally" (App. B, *infra*, p. 62) would ensue [10]—precisely the disruptive consequence that the

[10] Both IUE and company witnesses testified before the district court that, if the company persisted in its refusal to meet with the IUE Committee, a strike was likely (R. 207a, 419a–420a).

bargaining requirements of the Act are intended to prevent. The court of appeals to the contrary, we know of no way in which the Board proceedings could have been so expedited that a binding order might have been issued before August 23, when the district court issued its injunction—or, indeed, before October 2, when the then current contract was due to expire.[11]

Proceeding from the premise that Section 10(j) should be invoked sparingly in view of the history of the labor injunction and the policy of the Norris-La Guardia Act, the court of appeals concluded that an injunction was not proper here because, in the court's view, it was not necessary for preservation of the *status quo*, there was no showing of irreparable injury, the legal issue was a novel one which should be resolved in the first instance by the Board not the

[11] The Board's complaint could not have issued until an investigation of the charge filed by the union on May 9, 1966, had been completed. That investigation was completed with reasonable dispatch and the complaint was issued on July 13, 1966—and it would have been issued sooner except that the company's unfair labor practice charge against the union, which was not filed until June 8, had to be considered also; if it was well founded, the union's obviously was not. On July 15, the Board moved in the district court, and in little more than a month the district court issued its injunction. The Board's adjudicative proceeding upon the complaint could not possibly have been completed within this short period. There would have to be a hearing before a trial examiner followed by an appeal to the Board, and the Board order issued at the conclusion of that proceeding would not compel any action by the company until enforced by the court of appeals.

The Board hearing on the complaint was originally scheduled for September 19, 1966, but has been postponed at the joint request of the company and the union in order not to disrupt the bargaining negotiations currently in session pursuant to the injunction issued by the district court and the stay issued by Mr. Justice Harlan.

courts, and the Board should have expedited its own proceedings rather than seek judicial assistance. These grounds were, for the most part, expressly rejected by Congress when it adopted Sections 10(j) and 10(*l*). Opponents had argued that these provisions would revive the evils of the labor injunction and inject the federal courts into the merits of unfair labor practice cases—thereby impairing the Board's exclusive jurisdiction—and that they were unnecessary because the Board, adequately funded, could conduct administrative proceedings with sufficient expedition. S. Rep. No. 105, 80th Cong., 1st Sess., Part 2, pp. 18–19 (minority views). Congress thought otherwise. It concluded that adequate protection against abuse of the injunctive remedy was afforded by empowering only the Board, and not a private party, to seek relief;[12] and that, even when expedited, the administrative procedure prescribed by the Act—involving complaint, hearing before a trial examiner, appeal to the Board, Board decision and order, and enforcement by the court of appeals—was frequently too slow (S. Rep. No. 105, *supra,* p. 14). Most pointedly, Congress expressly rejected the model of the Norris-LaGuardia Act (29 U.S.C. 101, *et seq.*),[13] under which the stand-

[12] See 93 Cong. Rec. 4834–4847 (debate on, and rejection of, amendment which would have permitted private parties to seek injunctive relief); *Amazon Cotton Mill Co.* v. *Textile Workers Union*, 167 F. 2d 183 (C.A. 4).

[13] Section 10(h) provides: "When granting appropriate temporary relief or a restraining order * * * the jurisdiction of courts sitting in equity shall not be limited" by the Norris-LaGuardia Act. See *Building & Construction Trades Council* v. *Alpert*, 302 F. 2d 594, 596–599 (C.A. 1).

ard for injunctive relief is quite similar to that imposed by the court of appeals in this case.[14]

In short, Congress in Section 10(j) rejected the traditional standards for injunctive relief[15] and determined that the temporary injunction was an allowable and appropriate means of promptly checking unfair labor practices which were threatening to obstruct the free flow of commerce and impede the collective bargaining process.[16] Therefore, in a pro-

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[14] Under the Norris-LaGuardia Act, a temporary or permanent injunction may not be issued unless it is shown, among other things, that (1) "substantial and irreparable injury to complainant's property will follow"; (2) "as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief"; and (3) "complainant has no adequate remedy at law." 29 U.S.C. 107.

[15] In explaining the need for Sections 10(j) and 10(*l*), the Senate Report contains the statement that: "Since the Board's orders are not self-enforcing, it has sometimes been possible for persons violating the act to accomplish their unlawful objective before being placed under any legal restraint and thereby to make it impossible or not feasible to restore or preserve the status quo pending litigation." S. Rep. No. 105, *supra*, at p. 27. Read as a whole, and in the context of the other statements contained in the Report (see *supra*, p. 14), it is apparent that Congress was not suggesting that these injunctive provisions could be used only to maintain the *status quo* in a conventional sense. The statement in question merely refers to a situation where it is appropriate to preserve the existing situation, because a change appears to be unlawful. We believe the statement was not intended to apply to a situation, like that here, where the change in the *status quo* is not itself unlawful but a refusal to recognize that change may be.

[16] Under Section 10(j) (unlike Section 10(*l*)) the Board is not required to seek an injunction in every case in which it

ceeding under this section, the Board need not make the identical showing that would be required of a private litigant. To whatever extent the Board may be required to show "irreparable injury," it need show only "irreparable injury" to the public interest; such a

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finds reasonable cause to believe that an unfair labor practice has been committed. The Board has invoked Section 10(j) very selectively. An analysis of past cases indicates that consideration has been given to such factors as: "(1) the clarity of the alleged violations; (2) whether the case involves the shutdown of important business operations which, because of their special nature, would have an extraordinary impact on the public interest; (3) whether the alleged unfair labor practices involves an unusually wide geographic area, thus creating special problems of public concern; (4) whether the unfair labor practices create special remedy problems so that it would probably be impossible either to restore the *status quo*, or effectively to dissipate the consequences of the unfair labor practices through resort solely to the regular procedures provided in the Act for Board order and subsequent enforcement proceedings; (5) whether the unfair labor practices involve interference with the conduct of an election or constitute a flagrant disregard of a Board certification of a bargaining representative or other Board procedures; (6) whether the continuation of the alleged unfair labor practice will result in exceptional hardship to the charging party; (7) whether the current unfair labor practice is of a continuing or repetitious pattern; (8) whether, if violence is involved, the violence is of such a nature as to be out of control of local authorities or otherwise widespread and susceptible of control by 10(j) relief." *Administration of the Labor-Management Relations Act by the NLRB*, Hearings before the Subcommittee on National Labor Relations Board of the House Committee on Education and Labor, 87th Cong., 1st Sess., Part 2, pp. 1236–12237 (1961). The Report of that Subcommittee, far from adopting the narrow view of the court of appeals respecting the role of Section 10(j), criticized the Board for not utilizing that remedy more extensively. See Report of the Subcommittee on National Relations Board of the House Committee on Education and Labor, 87th Cong., 1st Sess. (Committee Print), pp. 50–52.

showing was plainly made here by the indication that, unless the company was enjoined, there would be a strike at one of the country's largest industrial firms, with necessarily serious disruption of the economy and adverse impact upon our defense effort. And to whatever extent the equities must be balanced, the serious injury to the public interest that would result if a strike occurs must be deemed to outweigh any possible private injury to General Electric if it is required to continue bargaining with a union negotiating committee which includes members of other unions.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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OCTOBER 1966.

APPENDIX A

United States Court of Appeals for the Second Circuit

No. 476. September Term 1965.

(Argued September 7, 1966. Dated September 8, 1966)

Docket No. 30752

IVAN C. McLEOD, REGIONAL DIRECTOR OF THE SECOND REGION OF THE NATIONAL LABOR RELATIONS BOARD, FOR AND ON BEHALF OF THE NATIONAL LABOR RELATIONS BOARD, PETITIONER-APPELLEE

and

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, INTERVENOR

v.

GENERAL ELECTRIC COMPANY, RESPONDENT-APPELLANT

Before LUMBARD, *Chief Judge,* MOORE and KAUFMAN, *Circuit Judges.*

KAUFMAN, *Circuit Judge*: The General Electric Company (GE) appeals from Judge Frankel's order granting a preliminary injunction under section 10(j) of the National Labor Relations Act, 29 U.S.C. § 160(j). The basic facts in the case are not in dispute and are set out in detail in the District Judge's opinion. —— F. Supp. —— (1966). Briefly, the General Electric Company has for years conducted separate

collective bargaining negotiations with the over eighty labor unions representing its employees. For the most part these negotiations have been held at the local plant level, although nationwide bargaining has been conducted with three unions of which the International Union of Electrical, Radio and Machine Workers, AFL–CIO (IUE) is the largest. In the past IUE has elected a General Electric Conference Board, which in turn elected a Negotiating Committee to bargain with GE. In 1965 the AFL–CIO formed a Committee on Collective Bargaining consisting of several unions which bargain with GE. The Committee's avowed purpose was to evolve a set of national goals and to adopt a "coordinated approach" to the 1966 round of collective bargaining negotiations. A Steering Committee of the Committee on Collective Bargaining was formed, and beginning in November 1965 it attempted to meet with the company to discuss various contract issues. The company consistently refused to meet with or recognize the Steering Committee. In April the IUE Negotiating Committee in a letter to GE stated that it would no longer pursue its request for joint negotiations, and suggested a meeting with the company to discuss preliminary matters concerning the negotiation of a new agreement to replace the one due to expire in October 1966. GE agreed to meet on May 4. The meeting, however, was short-lived. When GE discovered that seven men on the Negotiating Committee were affiliated with other unions represented on the Steering Committee it refused to commence contract talks and left the conference room.[1] Within a few days, both GE and the IUE filed unfair labor practice charges with the Board. Thereafter, the Regional Director of the Board issued a complaint that GE was

[1] Some of the seven were wearing lapel buttons reflecting their membership in other unions.

engaging in an unfair labor practice and also, pursuant to Section 10(j) of the Act, sought an injunction restraining the company from refusing to meet with the IUE's Negotiating Committee. After four days of hearings, Judge Frankel sitting specially to hear the case ordered a temporary injunction pending final disposition of the Board's complaint. His order, in part, restrained GE from "failing or refusing to meet, confer and bargain collectively in good faith with * * *. (IUE) * * * by declining to meet with the selected representatives of IUE * * * because of the presence of any representatives of other unions whom IUE * * * [has] invited to attend for the purpose of participating in the discussion and advising or consulting * * *."

It should be noted explicitly at the outset that with our disposition of this case today we are not passing on the basic controversy between GE and the IUE which Judge Frankel correctly characterized as "the extent of IUE's right to designate such additional, non-voting members of its Negotiating Committee—or, conversely, of the Company's right to hold such designees unacceptable or impermissible." The only issue which we decide today is the propriety of the section 10(j) temporary injunction issued against the General Electric Company.

It is the black-letter law that the issuance of an injunction is an extraordinary remedy indeed. This is especially true in the labor field where Congress by the Norris-LaGuardia Act deprived the federal courts of jurisdiction to issue injunctions in labor disputes. One exception to this almost blanket prohibition was carved out by Congress in Section 10(j) of the National Labor Relations Act empowering the Board to seek in the appropriate case a temporary injunction in the district court when a complaint charging an

unfair labor practice had been issued and was pending before the Board. This section in no way changed the extraordinary nature of the injunctive remedy. Nor did it change the basic purpose of the NLRA which envisaged a system in which the Board would, in the first instance, consider and decide the issues arising under the Act and pending before it, subject to later review by the Courts of Appeals. The Board, generally, has properly restricted itself to seeking injunctions only in cases of extraordinary circumstances, exercising its power "not as a broad sword, but as a scalpel, ever mindful of the dangers inherent in conducting labor management relations by way of injunction."[2] The courts have generally issued section 10(j) injunctions only to preserve the status quo while the parties are awaiting the resolution of their basic dispute by the Board.[3]

We are not convinced that the facts in the present case reveal those special circumstances which must be present before a court will intervene and issue an injunction prior to the Board's hearing and decision. The Board has not demonstrated that an injunction is necessary to preserve the status quo or to prevent any irreparable harm. Moreover, the basic legal question underlying its conduct—the very same question presented in the *American Radiator* case, 155 NLRB

[2] Statement by Frank W. McCulloch, Chairman of the National Labor Relations Board, in an address, *the NLRB in Action*, before the Eighth Annual Joint Industrial Relations Conference, Michigan State University, April 19, 1962.

[3] See, e.g. *Fusco* v. *Kaase Baking Co.*, 205 F. Supp. 465, 477 (N.D. Ohio 1962). The legislative history of section 10(j) indicates that it was added to the Act to enable the Board to restore or preserve the status quo while it is acting upon an unfair labor practice charge. Senate Report No. 105 on S. 1126, Legislative History of the Labor Management Relations Act, 1947, vol. 1, p. 433.

No. 69 (1965) in which the Board did not see fit to seek an injunction—is a difficult one to resolve and one which no court has considered. It would be more in keeping with the scheme intended by Congress to have this case, particularly because of its unusual characteristics, follow the path of Board hearing and decision on the unfair labor practice charges, rather than to short-circuit the established administrative design. The Board cannot abdicate one of the prime purposes for which it was created and thus deprive the Court of the expertise which would be available to it in reviewing the Board's holding in an enforcement proceeding. In short, this Court's decision on the ultimate proposition of law will be better based after the Board has applied its fund of knowledge to the problems involved. Indeed, this was the Congressional plan.

Nor are we moved to affirm the grant of an injunction because the Board's procedures may be slow and tortuous. We note that Judge Frankel devoted four days to the hearing in this case and held sessions during the summer months. His scholarly opinion with footnotes exceeded fifty pages. Thus, the testimony he was required to hear and the findings of fact he was compelled to make should more appropriately have been made in the first instance by the NLRB. This Court, moreover, convened an emergency panel during its summer recess to hear the appeal. The refusal of GE to proceed with the meeting occurred on May 4 and unfair labor practice charges, as we have already indicated, were filed within a few days. The controversy we are told involved important issues of labor law, many unions, and hundreds of thousands of workers engaged in this nation's defense effort. It is difficult to imagine a case that presented more vividly the need for prompt action by the Labor

Board. For reasons that escape us, the Board decided not to utilize with dispatch its adjudicatory machinery but to proceed instead on a course at cross purposes with that envisaged by Congress in the National Labor Relations Act.

We, therefore, reverse and vacate the temporary injunction with the caveat, as noted before, that we are not passing on the merits of the controversy for we believe this can and should be done promptly by the Board in the first instance. And, our review of the Board's decision will be accelerated upon application by any of the parties.

United States Court of Appeals for the
Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the eighth day of September one thousand nine hundred and sixty-six.

Present: Hon. J. Edward Lumbard, *Chief Judge*, and Hon. Leonard P. Moore, Hon. Irving R. Kaufman, *Circuit Judges*.

Ivan C. McLeod, Regional Director of the Second Region of the National Labor Relations Board for and on Behalf of the National Labor Relations Board, petitioner-appellee

v.

General Electric Company, respondent-appellant

International Union of Electrical, Radio and Machine Workers, AFL-CIO, CLC, intervenor

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is reversed and that the temporary injunction be and it hereby is vacated in accordance with the opinion of this court.

(S) A. Daniel Fusaro,
Clerk.

APPENDIX B

United States District Court, Southern District of New York

IVAN C. MCLEOD, REGIONAL DIRECTOR OF THE SECOND REGION OF THE NATIONAL LABOR RELATIONS BOARD FOR AND ON BEHALF OF THE NATIONAL LABOR RELATIONS BOARD, PETITIONER

AGAINST

GENERAL ELECTRIC COMPANY, RESPONDENT

OPINION 66 CIV. 2155 (AUGUST 18, 1966)

FRANKEL, D. J.

On May 9, 1966, the International Union of Electrical Radio and Machine Workers, AFL–CIO (IUE) filed with the National Labor Relations Board a charge alleging that respondent, General Electric Company, had violated Sections 7, 8(a)(1), and 8(a)(5) of the National Labor Relations Act, as amended, 29 U.S.C. §§ 157, 158 (a)(1), and 158 (a)(5), by refusing, on and after May 4, 1966, to recognize, meet, and bargain with an IUE bargaining committee. On July 13, 1966, the Board's General Counsel, through Regional Director McLeod, petitioner herein, issued a complaint and notice of hear-

ing on the charge. Two days later, by order to show cause, the Regional Director, for the Board, petitioned under Section 10(j) of the Act, 29 U.S.C. § 160(j), for a temporary injunction restraining the allegedly unlawful conduct. An evidentiary hearing was conducted through the week beginning July 25, 1966. Now, upon the record thus made, and instructed by the able briefs and oral presentations of counsel,[1] the court reaches the following findings and conclusions.

I.

The respondent is a New York corporation engaged in the manufacture, sale, and distribution of electrical and electronic equipment, chemicals, plastics and other things, including a variety of products for the national defense and atomic energy programs. It has some 290,000 employees, over 60 plants spread through 30 states, and more than 400 other installations (service establishments, warehouses, etc.), so that its physical properties and operations reach into every State in the Union. Approximately half its employees are unionized, and there is a total of about 150

[1] The charging union appeared by counsel, not strictly as a "party," and was permitted to examine and cross-examine the witnesses for both sides as well as to make legal submissions. The Chamber of Commerce of the United States and the National Association of Manufacturers of the United States joined in, and were granted leave to file, a brief as *amici curiae* supporting the respondent. A motion was filed by the National Electrical Manufacturers Association seeking to have its name added to that brief. The motion, which offered no enlightenment except to say this Association was deeply interested in the outcome and had nothing to add to what the *amicus* brief on file already said, was denied. The court is not assisted by such incomplete polls showing the weight of numbers, apart from reason, on one side or the other of a controversy. Cf. Wiener, *Briefing and Arguing Federal Appeals* 269 ff. (1961).

bargaining units. Overall, the Company deals with more than 80 labor unions.

For the most part, respondent bargains, at least formally, in separate negotiations for each bargaining unit. The three exceptions to this pattern are the IUE, the United Electrical, Radio and Machine Workers (UE), and the Pattern Makers' League. With these three Internationals, the practice has been to negotiate national agreements, supplemented by local unit agreements to encompass particular local conditions and problems.

The IUE represents about 80,000 of respondent's employees in some 65 to 70 bargaining units. In a substantial portion of these units, the International Union as such is the certified representative. In others an IUE local is certified. Notwithstanding the individual unit certifications, and the differing designations of the International or a local as representative, the practice as noted above, has been to conduct national bargaining for a national agreement covering all IUE units, supplemented by local agreements. The local agreements are designed as additions to, not variations from, the national contracts, which cover such basic matters as wages, hours, seniority, and arbitration procedures.

For these national negotiations, the IUE elects a General Electric Conference Board, comprised of representatives from both the International and local unions. The Conference Board in turn elects some 10 to 15 or more members to a Negotiating Committee, which meets at the bargaining table with a group designated by the Company.[2] In addition to these elected members, the Negotiating Committee has nor-

[2] Between contract negotiations, the Negotiating Committee meets with company representatives on grievances and other problems arising under the contract.

mally included people like the Union's general counsel, publicity workers, the research director, and other technicians. These additional members participate in discussions at the bargaining table and in the Negotiating Committee's internal councils, but they have no voting rights, which are reserved to the elected members. As will appear below, the nub of the present controversy is the extent of IUE's right to designate such additional, non-voting members of its Negotiating Committee—or, conversely, of the Company's right to hold such designees unacceptable or impermissible.

To complete briefly the procedural outlines on the Union's side: the Negotiating Committee is required to report on the progress of bargaining to the Conference Board. From time to time there are minority as well as majority reports. The Conference Board determines the Union's position on any given question, including ultimately whether a proposed national agreement should be signed.

In recent years the Company has developed a fairly uniform course for handling and coordinating its national and local bargaining activities. As described by its Labor Relations Counsel, the practice is to formulate a set of national company proposals for presentation to the IUE and the UE, two of the three unions with which there is bargaining on a national scale. Before these proposals are presented to the unions, the Company's employee relations managers are called to the New York main office, where copies are given and explained to them. The Company then presents the proposals to the IUE and UE. Normally within a day or two thereafter (in one instance, at the IUE's request, there was a five-day delay), upon instructions from the New York headquarters, the same proposals are given by the local managers to

the local representatives around the country of all the varying unions with which the Company deals on a so-called local basis—e.g., locals of the International Brotherhood of Electrical Workers (IBEW), International Association of Machinists (IAM), Sheet Metal Workers (SMU), and others. At the same time, and commonly before the unions have announced their acceptance or rejection, the uniform set of proposals is publicized to the Company's employees. This mode of centralized administration, despite the multiplicity of bargaining units and representatives, is rendered feasible in part because the Company's collective agreements, with an insignificant number of exceptions, have uniform expiration dates.

Testimony for the Company indicates that its local managers have some small measure of discretion for handling local problems by means of particularized local provisions. The discretion ends, however, at the point where questions deviate from the routine. At this point, the local managers are expected to seek advice, and evidently consent, from the New York office. Whatever the precise internal definition of these managerial powers may be, the ultimate fact is that all of the Company's offers to the many unions turn out to be substantially uniform in their basic provisions. And the substantial uniformity appears to extend to the agreements eventually concluded.

For some years before the events giving rise to this proceeding, the IUE and other unions representing respondent's employees were growing increasingly restive and self-critical over the results of their separate, mutually isolated efforts to cope with the Company's centralized bargaining strategy. They found themselves outmaneuvered repeatedly when the Company announced that one or more unions had accepted a proposal and used this as leverage to

wrest agreement from a more obstinate representative. They believed (although it is unnecessary for present purposes to decide whether they were right) that the Company's technique had tended to divide and conquer them; so that the terms and conditions of employment for General Electric employees had fallen behind others in comparable industries. They concluded that a program of mutually agreed "national goals" was needed to meet the Company's offering of identical national proposals. It was thought moreover, that there should be a means and a program for communication between the interested unions, mutual research assistance, coordinated publicity—in short, a substantial measure of "unity" and joint bargaining.

Acting on such views, the AFL–CIO, through its President, George Meany, called a meeting in October 1965 of a group of presidents or other representatives of international unions which (or locals of which) had bargaining relationships with respondent. Christened the Committee on Collective Bargaining, the group at its initial meeting contained officials of the IUE, IBEW, IAM, United Automobile Workers (UAW), Allied Industrial Workers (AIW), and American Federation of Technical Engineers (AFTE).[3] It was determined at the meeting that there should be a "coordinated approach" to the forthcoming 1966 negotiations with respondent. A Steering Committee was named, with responsibility for implementing the initial policy determinations, and the structure of some other committees was outlined. It was agreed that there should be a cooperative program of research, education, and publicity,

[3] The Committee was later enlarged to include the Sheet Metal Workers (SMU) and the American Flint Glass Workers (AFGW).

and an effort to evolve a set of "national goals" on wages and other working conditions. It was understood that each individual union, within its own constitutional framework, would control its own bargaining and retain the autonomous power to decide what agreements it might make with respondent. It was also understood, however, at least tacitly, that there would be consultation and an exchange of views if and when any union in the group decided to abandon or deviate from any "national goals" that might result from the inter-union deliberations.

Following the formation of the Committee on Collective Bargaining, and mainly under the leadership of its Steering Committee, a number of steps were taken to implement the "coordinated approach" to bargain with respondent. At the AFL–CIO convention in December 1965, a resolution was adopted reciting that the unions represented on the Committee had "joined together to form a common collective bargaining front for the negotiations * * * in 1966" with respondent and Westinghouse Electric Corporation. The group, the resolution continued, "plan to develop national goals which they will jointly support and prevent the corporations from playing one off against the other." Reciting the view that respondent (and Westinghouse) had lagged behind other major industries in granting employee benefits, the resolution said:

> The seven unions have expressed their determination, through an insistence upon genuine collective bargaining, to not only secure action in 1966 on pension and insurance problems, but also to assure their membership the benefits of the breakthroughs being made in recent labor-management agreements on other contractual matters.
>
> Experience has shown that in industries in which a number of unions operate, such coordi-

> nation of collective bargaining is the only way large corporations can be made to face up to their responsibilities. * * *
>
> * * * Therefore, be it
>
> "Resolved: We pledge the full support and resources of the AFL–CIO to the efforts of the Committee on Collective Bargaining, representing the seven unions, to secure justice for their membership in these negotiations, and call upon all affiliated unions to join us in this pledge.

Speaking in support of that resolution, IUE President Paul Jennings said:

> As these corporations grow larger and more diversified, it becomes more and more difficult for individual international unions to deal effectively with the corporation's technique of attempting to settle with one union, and then come to the others with an accomplished fact. What we have done, therefore, is recognize the basic fact that we have the responsibility to deal with each other as autonomous unions.

On March 15, 1966, the cooperating unions, now totalling eight, published a document entitled "Program for Progress." On its cover it bore a symbol consisting of a circle of links connecting boxes showing the initials by which the eight internationals are known. Within the circle appeared the legend: "We unite for a greater measure of justice." The text of the paper was preceded by a heading announcing "Joint Union Collective Bargaining Demands for GE-Westinghouse 1966 Negotiations," further characterized by a subheading that said: "National goals adopted by over 300 delegates from the 8 International Unions at the Conference on National Collective Bargaining Goals in Washington, D.C. on March 15, 1966." The document then proceeded to

list, and later to elaborate upon, a series of three "economic issues"[4] and six "non-economic contract

[4] "I. Wages

"A. A substantial wage increase to catch up on past wage short-fall, plus an annual improvement factor based on increased productivity and output.

"B. A planned program to end geographical differentials for the same type of work.

"C. A cost of living escalator providing for one percent of wages for each one percent increase in the cost of living.

"II. Holidays and Vacations

"A. Nine paid holidays—double time for holiday work, plus the holiday pay.

"B. A progression schedule on vacations for hourly employees that would provide for a graduated vacation between 1 and 5 years' service, between 5 and 10 years' service, and between 10 and 20 years' service. A proportionate increase in paid vacation benefits for salaried employees.

"C. A vacation bonus of 25 percent of wages.

"III. Income and Employment Security

"A. The SUB (Supplementary Unemployment Benefit) type of layoff benefit plan.

"B. Restrictions on overtime where people are on layoff; double time for all overtime hours.

"C. No contracting out of work historically performed by employees in the bargaining unit when skills, manpower and facilities are available.

"D. The right to move with the job; employees shall have preference over new hires in plants to which their jobs have been moved, or where there is a build-up of operations and a curtailment of job opportunities in the home plant. A reasonable moving expense shall be paid.

"E. A joint labor-management program shall be developed leading to a progressive shortening of the work week and work year.

"F. Provision for 6 days paid sick leave per year for hourly employees. Proportionate increase in paid leave for salaried employees."

clauses"[5] the unions proposed to press in the forthcoming negotiations. The paper concluded with a "Resolution on Unity" which said, *inter alia:*

> It is now time for us to convey the details of this program to the membership of our local unions. At the same time we must communicate with the public in a manner which will create sympathetic understanding of our program and of our objectives. * * *
>
> We have developed a sound basis for coordinated negotiations as the result of the spirit of mutual respect and confidence which has been developed to new levels during recent months. * * *
>
> While we come together as representatives of eight different unions accustomed to negotiat-

[5] "I. A full arbitration clause with no restrictions.

"II. The full union shop.

"III. Automation provisions which would provide for:

"A. Program of retraining of employees to prepare them for new skills that will be needed by changing technology.

"B. Rate retention and/or increases when jobs have become automated.

"C. The maintenance of the bargaining unit against erosion under automation.

"D. Maintenance of job security by some form of attrition clause.

"IV. Continuity of Service. A minimum of two years and time-for-time above two years' service for periods of layoff.

"V. Anti-Discrimination Clause.

"'The Company agrees that it will not discriminate against any applicant for employment, or any of the employees, in payment of equal wages, assignment to jobs, seniority, promotions, training, transfer, layoff, discipline, discharge, or any other term or condition of employment, because of race, color, religion, marital status, sex, age, or national origin.'

"VI. Pension and Insurance Program.

"Details to be found in the Pension & Insurance Fact Sheets."

ing with the GE and Westinghouse Corporations on a union by union basis, the companies' representatives have dealt with us and will continue to attempt to deal with us, either locally or nationally, under a centrally controlled program. The fact is that even though the companies have opposed company-wide bargaining on any issue they have, in fact, insisted upon the implementation of company-wide policies during contract negotiations.

By the action we have taken here today we intend to confront company-wide policies with a union-wide program.

Our members will know and the companies will know that all bargining units will be directing their energies toward the same national goals.

Of course, in addition, each union will have an opportunity to pursue additional goals necessary to meeting its own problems. * * *

In the light of these simple and commonsense principles, it is a matter of deep regret, that at least twice in recent weeks, General Electric officials have launched bitter, yet totally unfounded, attacks upon our efforts. They accuse us of wanting to carry on meetings with the company "in secrecy" and of wanting to take away the rights of bargaining units to carry on their negotiations; the company charges that our activities will lead to "industry-wide barganing" with "strikes and unsound settlements" and "economic strangulation," which, of course, is not true. * * *

Not only do we reject this obvious attempt to confuse and divide us, but we pledge to each other our mutual cooperation, our mutual understanding and our mutual support.

At the meeting in which the foregoing Program and Resolution were adopted, IUE President Jennings observed that the cooperative effort gave the lie to those who had deemed such a thing inconceivable be-

cause of inter-union jealousies, rivalries, suspicion, and mistrust. He rejected as misleading propaganda the management view that the joint effort would impair the power of individual unions to bargain for themselves. He said: "What concerns these corporations, is that each group as it bargains will have the confidence that all other bargaining groups are going to be asking for the same national goals."

Implementing the decision to publicize the joint program and educate the memberships of the several unions, the Committee on Collective Bargaining created a publication called "Unity," the first issue of which (dated March 1966) announced that it would "be distributed to all GE and Westinghouse workers from time to time during the eight-union drive." To the same end, a series of so-called "grass roots meetings" was scheduled and held for the companies' workers in various places around the country, with one or another of the cooperating unions acting as "host" on each occasion.

In the course of these collaborative efforts, people identified with IUE said, or were quoted as saying, on two or three occasions that there was an intention under the unity program "for no one to sign a contract with General Electric until all parties sign." The quoted words are from a one-page mimeographed "flyer" distributed by IUE Local 320 (Syracuse, N.Y.), and produced in evidence by respondent from the full dossier it keeps of such documents. A newspaper reporter for a Fort Wayne, Indiana, newspaper, called as a witness by respondent, quoted a similar statement of March 3, 1966, attributed to John Callahan, Chairman of the IUE's General Electric Conference Board and Negotiating Committee. Although it filed such statements, and later gave them in evidence here, respondent never mentioned them to

anyone in IUE responsible for negotiations, deeming it a waste of time to make any direct inquiry into the Union's position.

Despite the foregoing statements, it seems clear, and I find, that there was never any agreement, express or implied, among the cooperating unions that none would sign with respondent unless all signed. It was tacitly understood that before any of them varied or abandoned any of the agreed "national goals," they would inform and consult with each other. The cooperative arrangements were instinct with the objective of approaching, as nearly as possible, the kind of unitary stance respondent regularly took vis-a-vis the several unions. But each union retained the "autonomous" status affirmed in the AFL–CIO resolution of December 1965, so that each was free at all times to sign with respondent on terms it deemed acceptable for its members. Moreover, as will appear later, this question whether the cooperating unions were "locked in," though extensively canvassed in the hearing and briefs, turns out in the end to be essentially irrelevant to the issue before us.

We come, finally, to the events directly generating this proceeding. As the evidence unfolds, the story may start with a telegram of November 16, 1965, from the (then) seven-union Steering Committee to respondent's Philip D. Moore, raising pension and Social Security issues with the substance of which we are not concerned. In a wired response the next day, after stating the Company's position, Mr. Moore said:

> We note that your telegram listed the names of several representatives of other unions. However, this telegram is addressed to you as a representative of the IUE since we do not bargain with their unions at the national level. We assume, of course, that these gentlemen will

> continue to be in touch with their respective local union officials who in turn are always free to discuss appropriate matters covered by their local contracts with local managements.

On November 24, 1965, Mr. Moore confirmed in a letter to Mr. Callahan a proposal respondent had made for the creation of subcommittees to explore preliminarily the subjects of grievance procedure, contract language, and employment security, beginning in December 1965, as groundwork for the negotiations formally scheduled to begin in August 1966.[6] Answering for IUE on December 21, Mr. Callahan objected to some of the substantive and procedural thoughts Mr. Moore had expressed, and made some counterproposals for the subcommittee procedure. Mr. Moore treated of these views in another letter dated January 20, 1966. In answer to this, on February 7, 1966, the Committee on Collective Bargaining wrote to Mr. Moore, observed that the subcommittee problem had been "the subject of considerable discussion" between the Company and the several unions, and said:

> Since the matter is common to the eight AFL–CIO unions which are joined together in

[6] Since the collective agreement freed both parties from any enforceable obligation to bargain until a date no earlier than mid-August 1966, there was a potential threshold issue for the case at bar whether there could be a basis for charging respondent with a refusal to bargain as early as May. The Company, in what seems an eminently sound and statesmanlike view of the matter, recognized that the central problem in the case would remain no less real and unresolved if it were put off until August or later, so that the only real result would be to heighten the atmosphere of crisis in which an adjudication was had. Accordingly, without waiving any contract or other rights for any other purpose, respondent has agreed that there is no contention in this case that the Union's demand for bargaining is premature.

> preparation for these negotiations, and we have given it considerable thought, we are offering you our joint thinking.

After outlining the promised "joint thinking," this letter said:

> Since our eight unions have a jointly developed approach on how to create the most successful type of meetings, and since your management has a national policy on this matter, the simplest and most effective solution is a conference between us.

On February 15, the Steering Committee wrote again to Mr. Moore, this time on one of the Social Security problems mentioned earlier herein. Among other things, the Committee wrote in this letter:

> Since your offer to each of the unions is the same and we have considered this matter jointly, we believe it would be to the best advantage to all considered that we have a joint meeting in order to discuss your proposals.

On February 24, Mr. Moore wrote three letters in evidence here. The first, to Joseph Swire, IUE's Pension and Benefit Consultant, referring to claimed misconceptions in the Steering Committee's February 15 letter, said:

> It would be most inappropriate for us to respond to the Steering Committee as they requested in their recent letter since this would only serve to create an illusion that national negotiations on benefits are now in process and that locally negotiated contract agreements are subject to alteration at the national level.
>
> You can help to clarify this matter by advising your associates in the other unions that no arrangements have been made between IUE and General Electric which would require or facilitate multi-union negotiations or discussions in that direction.

Mr. Moore's second letter, to David Lasser, Assistant to the President of IUE and chairman of the Steering Committee, protested the proposed "coalition" approach by the unions, observing, *inter alia:*

> * * * It now appears that [there] * * * is a bid for General Electric to recognize this group as a merged negotiating body. Apparently this new group is seeking to take over negotiations that historically have been carried on by the IUE here in New York, and independently by the seven other unions at the Company locations where they are certified.
>
> We realize that it is not our place to advise you and your associates on internal union affairs and that arrangements for coalitions and mergers for negotiations purposes have been publicized before as indications of intra-union cooperation. We also realize that the officials of the unions involved may actually have some organizational authority to give up their independence at the bargaining table for tactical reasons.
>
> We are not responding to your Steering Committee's two recent letters because by doing so it might create the mistaken impression that national bargaining with local bargaining units is in effect; this is clearly not the case nor do we believe it should be. * * *

The letter went on to portray the dangers and defects of "industry-wide bargaining," expressed fears of "experimenting with techniques that go in the direction of unnecessary strikes and unsound settlements," and concluded that such evils could "be the long-term hazard of any coalition in our industry."

Mr. Moore's third letter of February 24 was to Mr. Callahan, congratulating him on his re-election as Chairman of the Conference Board, urging that the parties move forward on the subcommittee problem, and enclosing a copy of the preceding letter to Mr.

Lasser. Repeating his objections to "coalition bargaining," Mr. Moore wrote in this letter "* * * I want to assure you now that there is no likelihood that we will obstruct negotiations with your union nationally or with the other seven unions locally (where they are certified to negotiate) by engaging in coalition bargaining."

In a reply of March 10, 1966, among other points of disagreement, Mr. Callahan chided Mr. Moore for "choos[ing] to ignore the suggestions of the eight unions completely and, instead, propos[ing] that [the parties] start subcommittee meetings on [respondent's] unilaterally determined basis."

On March 23, 1966, the eight-union Committee pressed its efforts toward joint sessions in a telegram to respondent's President, Fred J. Borch, reiterating such points as the following:

> The contracts of our eight unions with GE on the major issues considered by the [Union] Conference are the same and we naturally have developed a common program to improve our agreements. * * *
>
> In order to canvass this whole problem [of a peaceful settlement] facing us jointly as an attempt to lay the groundwork for such collective bargaining, we propose an early meeting with you and your representatives.
>
> Such a meeting would be informal and would involve no commitments as to future action by either group.

Mr. Borch telegraphed a rejection of this proposal on March 25. On the same day, Mr. Moore wrote again to Mr. Callahan, enclosing a copy of the Borch wire, referring to his letter of March 22 on the subcommittee problem, and repeating that the Company remained "receptive to appropriate pre-negotiation discussions with IUE, but * * *[did] not intend to

participate in any eight-union coalition discussions or in any other steps in the direction of industry-wide bargaining."

In his reply to Mr. Moore dated April 13, 1966, Mr. Callahan announced a significant change of position. He said the Committee on Collective Bargaining and IUE's membership "were truly disappointed that the officials of General Electric did not find it possible to accept the request of the eight union presidents for an informal meeting" to discuss a joint approach. "However," he continued,

> it is clear that General Electric is not willing to hold any such joint meeting, even though it may be informal. The IUE did not intend by its telegram any formal request for joint negotiations. Speaking for the IUE–GE Conference Board, we will not pursue that matter any further and will abandon any suggestions for any such joint meeting or for joint discussions.

He went on to discuss still outstanding differences concerning the proposed subcommittee procedure, then said:

> * * * We believe the only way to satisfactorily deal with all of these problems and attempt to resolve them is by a meeting between your representatives and our Negotiating Committee. The IUE–GE Negotiating Committee therefore request that your Company meet with it to discuss all of the problems I have mentioned, including the agenda of subject matters for, the number of and the scheduling of, the proposed sub-committee meetings.

Replying on April 20, Mr. Moore expressed his satisfaction with the foregoing statement of IUE's position. He suggested, and it was soon agreed, that the committee for the Company and the IUE should meet at 10 a.m. on May 4 "in the usual Conference Room" at the Company's offices.

In preparation for that meeting, as stated in an IUE statement prepared for delivery to respondent, the Union added to its Negotiating Committee, as non-voting members, one representative from each of the other seven unions that had comprised, with IUE, the Committee on Collective Bargaining. The seven were needed, it was thought, to give the benefit of their experience in negotiating with respondent, and to supply adequate inter-union communication as a means of avoiding the "whipsawing" respondent was thought to have accomplished in the past. It was not intended by adding these members to bargain for any unions other than IUE. Nor did the additions reflect any understanding that a proposed agreement between IUE and respondent would be subject to approval or disapproval by any other union.

The IUE Negotiating Committee, with the seven men from other unions, arrived at the appointed meeting place at about 9:45 a.m. on May 4. Some of the seven were wearing lapel buttons reflecting their membership in other unions. A member of respondent's staff, observing this, hastened to report it to Mr. Moore, who made it the subject of a speedy discussion of strategy with his committee. Respondent's committee concluded that the inclusion of the seven in the group ostensibly appearing for IUE was a breach of faith, or, at the least, an attempt to use and apply the Labor Board's recent decision in *American Radiator & Standard Sanitary Corporation,* 155 N.L.R.B. No. 69 (November 1965), which upheld the propriety of such additions to a union negotiating team. Advised by its counsel that the Board's *American Radiator* decision should be deemed unsound, and that it should not be followed, respondent's committee concluded that it would not meet with the IUE group while it included the seven "outsiders." It was de-

cided that the Company's group would repair to the conference room, that Mr. Moore would state the position, and that they would then depart without tarrying.

The plan was executed. Mr. Moore and his colleagues went to the conference room, filed around the table, and greeted those who had arrived earlier. With all, or substantially all, of the unwanted seven, there was a brief, approximately uniform conversation. As Mr. Moore and each of them exchanged introductions, he said: "I see you're from [naming a union other than IUE]." To which each replied that he was appearing this day as a member of the IUE Committee.

Following the tour of the table, the Company's people took seats on their side. Mr. Callahan said he had a statement to make. Mr. Moore said he had one to make first, and he proceeded to do so. He said he "must have come to the wrong meeting;" that he would not be a party to "coalition bargaining;" that he deemed the meeting recessed at 2 p.m., at which time those on the other side were invited to return "with an IUE Committee," excluding people from other unions. Mr. Callahan and IUE's general counsel requested an opportunity to explain, putting their requests more shrilly as the Company's people prepared to leave. They managed to shout that their group was intended to be "an IUE Committee," but no more than that before Mr. Moore and his colleagues swept from the room. The whole episode took about ten minutes.

Later in the morning, Mr. Callahan delivered to Mr. Moore, at the latter's office, a letter composed after the brief conference room encounter. The letter said the Union was "shocked at [Mr. Moore's] refusal to meet the IUE-Negotiating Committee and * * *

intemperate and arbitrary refusal to permit the Committee to respond to [Mr. Moore's] false enunciation of the purpose of [the] Committee." It announced IUE's readiness to resume the meeting at 2 p.m., but insisted that the Union had a "right to choose the representatives of [its] own Committee," and rejected any suggestion that the Company could "designate the composition" of the Committee.

The parties have adhered to their positions. On June 8, 1966, the Company filed with the Labor Board a charge accusing IUE, the Committee on Collective Bargaining, and the other unions in that Committee of violating Section 8(b)(1)(A) of the National Labor Relations Act, 29 U.S.C. § 158(b)(1)(A) by, *inter alia,* engaging "in an illegal concerted, collusive effort to force GE to recognize and bargain with CCB as the representative of the aggregate of employees represented by the eight named labor organizations;" entering "into an illegal contractual arrangement under which each will be precluded from entering into a collective bargaining agreement with General Electric Company unless and until all the unions have agreed to enter into such agreement;" and thus restraining and coercing respondent's employees in the exercise of their right under Section 7 of the Act, 29 U.S.C. § 157, "to bargain through representatives of their own choosing * * *." On July 13, 1966, petitioner wrote respondent and announced his view that there was no basis in the evidence for issuance of a complaint on this charge. Respondent has obtained an extension of time to appeal this ruling to the Board's General Counsel.

As noted much earlier, the IUE, on May 9, 1966, had filed the charge leading to the complaint and the Board's decision to bring the present proceeding for injunctive relief.

II

The ultimate legal issue in the case is this: Taking account of all background events and exchanges, has the Company been justified, since May 4, 1966, in refusing to meet with the group tendering itself as the "IUE Negotiating Committee" on the single stated ground that the group included seven non-voting members who normally represent other unions comprising (with IUE) the Committee on Collective Bargaining? I conclude that the Company has not been justified; that there is compelling ground to expect eventual findings by the Board establishing the alleged unfair labor practices; and that the relief petitioner seeks is just and proper. The bases for these conclusions—composed primarily of reasons for rejecting respondent's defensive theories—are as follows:

First, a preliminary issue: concerning respondent's proposal to investigate the Board and the Regional Director

At the outset of the injunction proceeding, respondent served a subpoena duces tecum upon petitioner seeking statements obtained by Board investigators, internal Board memoranda, "and all documents considered by the Board members in their agenda meeting at which authorization allegedly was granted" to bring this action. Upon argument of a motion to quash, respondent's counsel undertook to explain the purpose of the subpoena by stating, first, that there was "reason to believe that the decision by the Labor Board to instruct the Regional Director to bring this proceeding was made by a divided board, split, we believe, 3 to 2." Exploration of this belief about a non-public, unreported vote would help demonstrate, it was argued, that the case is a close one, and there-

fore unsuitable for injunctive relief under Section 10(j). In addition, counsel said, the papers sought from the Board's files might show gaps in petitioner's investigation of the matter, and thus go to whether institution of this proceeding was without "reasonable cause."

The motion to quash was granted. There is no justification for, and powerful authority against, the proposed exploration into the processes by which the Board, as a Board, reached the determination on which it acted. See *United States* v. *Morgan*, 313 U.S. 409, 421–422 (1941); *Madden* v. *International Hod Carriers' Union*, 277 F. 2d 688, 693–694 (7th Cir.), *cert. denied*, 364 U.S. 863 (1960); *Douds* v. *Wine, Liquor and Distillery Workers Union*, 75 F. Supp. 184, 186 (S.D.N.Y. 1947). But cf. *Sperandeo* v. *Milk Drivers Union*, 334 F. 2d 381 (10th Cir. 1964); *Madden* v. *Milk Wagon Drivers Union*, 229 F. Supp. 490 (N.D. Ill. 1964). Assuming for argument's sake, as I did in quashing the subpoena, that there was dissent within the Board, the court is not authorized to investigate and weigh that in appraising the case. Similarly, it could not comport with the respect owed to the "integrity of the administrative process" (*United States* v. *Morgan, supra*, at 422) to allow a trial of the regional director's performance of his investigative duties before proceeding to the trial that official has been authorized and instructed to seek against respondent. In any event, "the adequacy of the investigation is judicially tested only by the Board's subsequent ability to sustain its initial determination that the investigation disclosed reasonable cause to believe that a violation occurred." *Madden* v. *International Hod Carriers', Etc., Union, supra*, at 693. That test, as should become apparent from what is said herein, has been amply met.

Second, respondent's asserted justification for refusing to meet with the Negotiating Committee tendered by the IUE

Since respondent's group literally walked out and refused to talk with the IUE Committee, the case in its substantive aspect starts with what appears on its face to be the boldest and most explicit form of refusal to bargain. The problem, then, as the parties have joined in presenting and contesting it, is whether respondent has been, and is now, justified in its steadfast refusal to meet while the IUE committee includes seven individuals whose usual identification is with other unions that deal in other units with respondent. To put the claimed justification in its own words: "Respondent contends that the charging union's pretended renunciation of its drive for joint bargaining is sham, and that its claimed reserved right of independent action is the emptiest formality."[7] Further, respondent says, in light of what had gone on before,

> the charging union had no right, over the Company's objection, to introduce into the bargaining with the Company, and insist upon the presence thereat of men who—however denominated by IUE—were in fact representatives of other unions. For in doing so, IUE (a) injected into the IUE–GE negotiations the potential of conflict among unions should their individual interests, as the bargaining proceeded, differ from their announced common goals, and thereby (b) exceeded the limits imposed by law on the selection of its bargaining representatives.[8]

In some of respondent's other words, "if IUE never truly cast off the taint of illegality which marked its efforts at joint bargaining, respondent was not under

[7] Respondent's Post Hearing Brief, p. 2.
[8] *Ibid.*

a duty to bargain with its expanded committee on May 4th."[9]

In resolving the controversy generated by these contentions, it has seemed helpful, first, to recall the principles that circumscribe the rights of either negotiating party to set qualifications for the other's representatives; then, to identify and consider the "taint of illegality" which is said to have triggered respondent's withdrawal from the May 4th meeting; and, on this basis, to determine the validity of the claimed justification for this action.

1. Section 7 of the Labor Act, 29 U.S.C. § 157, guarantees employees the right "to bargain collectively through representatives of their own choosing * * *." Section 8(b)(1)(B), 29 U.S.C. § 158(b)(1)(B), protects employers against restraint and coercion by unions in selecting "representatives for the purposes of collective bargaining * * *." Although there are some differences between the two protections, *N.L.R.B.* v. *Local 294, Internat'l Br. of Teamsters, Etc.*, 284 F. 2d 893, 896 (2d Cir. 1960), their substantially identical core, pertinent to our problem, is a broad assurance that neither side may select or veto the persons or agents to be employed by the other for negotiations. *Ibid.*; *Standard Oil Company* v. *N.L.R.B.*, 322 F. 2d 40, 44 (6th Cir. 1963); *N.L.R.B.* v. *Roscoe Skipper, Inc.*, 213 F. 2d 793 (5th Cir. 1954).

Like most rules, this one "is not absolute or immutable." *N.L.R.B.* v. *International Ladies' Garment Wkrs.' Union*, 274 F. 2d 376, 378 (3d Cir. 1960). It has on rare occasions been the subject of narrow exceptions. So, for example, employers have been sustained in refusing to meet with unions whose ownership of, or investment in, competing businesses posed

[9] *Id.*, p. 6.

a "conflict between investment protection and worker representation motives * * *." *N.L.R.B. v. David Buttrick Company*, 361 F. 2d 300, 305 (1st Cir. 1966); see also *Bausch & Lomb Optical Company*, 108 N.L.R.B. 1555 (1954).[10] Similarly, a union has been held free to refuse to sit down with a company representative recently departed from the union's camp, bearing "years of familiarity from the inside of the union with its strategy, thinking, working, and operations," and introduced "tauntingly and laughingly" by management to show it had "put one over on the union * * *." *N.L.R.B.* v. *International Ladies' Garment Wkrs.' Union, supra*, 274 F. 2d at 379. And an employer has been upheld in refusing to meet with a particular individual whose "expressed hostility to the [employer] and * * * purpose to destroy the [employer] financially made any attempt at good faith collective bargaining a futility." *N.L.R.B.* v. *Kentucky Utilities Co.*, 182 F. 2d 810, 813 (6th Cir. 1950).

In the handful of such extreme and unusual cases—especially the couple involving objections to individual negotiators—the proposed representatives were held to be so patently obnoxious or tainted by conflict that their very presence at the table belied any "good faith offer to bargain * * *. *N.L.R.B.* v. *Local 294, supra*, 284 F. 2d at 896.

The analogy respondent attempts between such cases and this one is not impressive. By way of a preliminary, shorthand rejection of the analogy, we note an interesting point of advocacy and the use of precedent. Respondent relies at some length on the 1950 opinion of the Sixth Circuit in *N.L.R.B.* v. *Kentucky Utilities Co., supra*, a quaint and scarcely semi-

[10] While the cited cases involved employer objections to *unions* rather than particular individuals, their principle seems to warrant respondent's invocation, and our mention, of them.

nal case where the union had apparently agreed that its proffered negotiator was understandably repulsive to the company and should not appropriately have been placed at the bargaining table. See 182 F. 2d at 814. On the other hand, respondent's 88-page post-hearing memorandum does not mention once the same Circuit's 1963 holding in *Standard Oil Company* v. *N.L.R.B.*, 322 F. 2d 40, which rejected an employer position indistinguishable in principle from the one pressed here, and which is accordingly invoked by petitioner and the charging union as a closely apposite precedent.[11] In the end, the decision in the case at bar closely follows the rationale of that one. Nevertheless, the court has considered, and it seems appropriate to treat with, the details of respondent's arguments for a different result.

2. Respondent considers at length the Committee on Collective Bargaining, its program and symbols of "unity," its agreement on "National goals"—its status, under respondent's favored label, as a "coalition." It is helpful to isolate the particulars in all this which are said to have left the "taint of illegality" respondent claims as the source of its absolution from the duty to bargain with the IUE Committee. For many of the things respondent stresses about the "coalition" are not suggested even remotely to have been unlawful or in any sense improper.

Thus, there is no contention that it was wrong for the several unions dealing with a single enterprise to consult together. Nor is it intimated that the unions offended the law—or behaved questionably, in any pertinent sense—when they succeeded in formulating and unanimously endorsing a set of common goals

[11] Respondent does cite a second, different aspect of the *Standard Oil* case, a pro-employer ruling, which has some bearing here and is touched on below.

(to be sought from a common management and a common exchequer) on matters like wages, seniority, holidays, and the like. Cf. *United States Pipe and Foundry Company* v. *N.L.R.B.*, 298 F. 2d 873, 877–78 (5th Cir.), *cert. denied*, 370 U.S. 919 (1962); *Standard Oil Company* v. *N.L.R.B.*, 322 F. 2d 40 (6th Cir. 1963); *American Radiator & Standard Sanitary Corporation*, 155 N.L.R.B. No. 69 (November 1965). It is no less permissible for unions so situated to share research, personnel, ideas, and information. They are allowed, in short, to assist each other and discover if possible areas of agreement, of "unity," and of mutual support in dealing with the unified, unitary, centralized management they confront. At least, subject to the two points considered below, neither respondent's nor our own researches have suggested any different view. And so it is not surprising that the essentially lawful efforts of the eight-union Committee were entirely public, and highly publicized; there appears to have been nothing, and no reason, to hide.

To be sure, the Company perceives a threat in all this. While it takes pains to coordinate its own dealings in all the many bargaining units, it foresees a danger of "national strikes" from an approach to similar coordination on the other side of the bargaining table. And it may well be true that efforts by the unions to collaborate in the exercise of their "countervailing power" could result, unless responsible people are careful, in larger collisions than the separate unions in isolation from each other might threaten.[12]

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[12] Professor Galbraith's germinal, and now familiar, concept of "countervailing power" comes quickly to mind in response to the contending views and efforts of the parties in this struggle. See *American Capitalism—The Concept of Countervailing Power* (2d ed. 1956). And see especially, concerning the relevance of the concept to labor-management relations, pp. 114–

There is no occasion here to do more than mention such fundamental considerations of power and policy underlying disputes like the one at bar. For the most part, such concerns are outside the province and the competence of courts. At any rate, our problem here remains to identify and deal with the alleged "taint" in the "coalition" which is at the center of respondent's thesis.

What this comes to in the end is two interrelated things: (1) that the eight collaborating unions were bent on a program of "joint" or "multi-union bargaining"; and (2) that they were "locked in" to an understanding that none would reach an agreement with respondent unless all did. Both particulars are found upon analysis to contain fatal defects of fact and of law.

17, 136, 151–53. Concerning the fears of those who regret the growth of countervailing power because it threatens possibly larger and bloodier struggles between approximately equal giants, see the following observations (p. 147):

> A number who have accepted as desirable the development of countervailing power by previously disadvantaged groups have been nonetheless careful to point out that it is decidedly a second-best solution. Given the power of the modern industrial corporation, it is doubtless well that those who do business with it have the capacity to protect themselves. But how much better to have avoided this struggle between the behemoths. There is something frightening and possibly dangerous about this bargaining between vast aggregations. How much better to have denied power to all. The world of countervailing power may be tolerable but it is highly imperfect.
>
> This is an appealing argument although it is not likely to appeal to anyone who is interested in results. Past efforts to extirpate economic power have been notably unavailing. One cannot suppose that they will be more successful in the future. Economic power may indeed be inherent in successful capitalism. We had better be content with restraints we have than to search for a never-never land in which they would be rendered unnecessary.

3. The notion of joint or multi-union bargaining refers in our context to a process of simultaneous bargaining with respondent by several unions representing, and separately certified for, separate units. It is a minimum consensus in the case that a party may seek such joint bargaining, and that the two sides could agree to have it, though it may be unlawful to insist adamantly upon it or use coercion to achieve it after the point of impass.[13] Thus, when the Steering Committee of the Committee on Collective Bargaining, on three occasions before April 13, 1966, proposed joint meetings on subjects of common interest, its conduct was in no sense unlawful. Nor, on the premises of this decision, was respondent wrong in rejecting these overtures.

Since, on respondent's own submission and on substantial authority (see note 13, supra), the IUE would have trod dangerous ground had it pressed adamantly for joint bargaining, there was substantial reason for it to retreat from its position. It purported to do so in its letter of April 13, 1966. And this, it may be recalled, was the letter that led to the May 4 meeting where the IUE Committee included the seven outsiders.

But there was no bargaining at all, let alone "joint" or "multi-union" bargaining, on May 4 or thereafter. The abrupt departure of respondent's committee precluded it. And here we reach a critical aspect of respondent's position. The appearance of the outer seven, respondent says, exposed a plot "to impose

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[13] The charging Union, at least, does not concede that such adamant insistence would be unlawful. For present purposes we assume, without having to decide, that the Union is wrong in this. Cf. *N.L.R.B.* v. *International Brotherhood of Elect. Wkrs.*, 266 F. 2d 349 (5th Cir. 1959); *Labor Board* v. *Borg-Warner Corp.*, 356 U.S. 342 (1958).

multi-union bargaining on the Company" (Post Hearing brief, p. 58); the "expanded bargaining committee was a bold and overt step in the march of the unions toward multi-union bargaining" (id. p. 71). In this view, it makes no difference that the IUE Committee said it had come only on IUE business. Likewise, there was no point in attempting to bargain and to see whether "multi-union" matters were proffered for consideration. The very constitution of the Union Committee, respondent says, imprinted the multi-union taint.

There is in all this a seeming notion that "multi-union bargaining" has some of the qualities of a stealthy disease, and that the Company might have been insidiously and unknowingly infected with it. The IUE had given its word that the effort to achieve such bargaining was over. Its Committee had arrived on May 4 with this assurance to respondent. Unless there is some mystery in all this, respondent's people could have tested the assurance by proceeding to bargain and waiting to see what happened.

We reject respondent's thesis and hold that it could not walk out in a state of supposed or pretended certainty that the Union's promise would be broken. There is sound reason, and substantial precedent, for dismissing the argument that representatives from other unions inevitably bring the infection of unlawful or non-mandatory joint bargaining. *Standard Oil Company* v. *N.L.R.B.*, 322 F. 2d 40 (6th Cir. 1963); *American Radiator & Standard Sanitary Corporation*, 155 N.L.R.B. No. 69 (Nov. 1965).

The argument is not less fallacious in this case because of the background of "unity" and joint bargaining proposals before May 4 on which respondent puts heavy emphasis. The IUE was entitled to change its course; following respondent's persuasive

view of the law on joint bargaining, it was required to do so. The law, like other normative disciplines, contemplates the possibility of, and welcomes, penitence. Respondent was not privileged to do less. Whether its stubborn refusal to listen on May 4 reflected earnest conviction, or was merely a considered ploy in the establishment of a litigating posture, it could not be justified by the conjectural claim that the IUE team was ineluctably bent on "multi-union bargaining." (See the nearly identical conjectures in *Standard Oil Company* v. *N.L.R.B., supra,* 322 F. 2d at 43–44). What the IUE was bent upon could only be determined with respondent's professed certainty by doing what respondent chose not to do—by staying and bargaining and seeing whether the IUE had lied when it said it had come to negotiate only for its own agreement. The choice respondent made, foreclosing any possibility of accommodation or understanding, was an elementary form of wrong under the Labor Act. It was, as petitioner asserts, an unlawful refusal to bargain.

4. There remains respondent's claim that the "coalition" of unions had agreed that none would sign any agreement with respondent unless or until all were ready to do so. We accept for this case the premise that such an arrangement among the unions would have been unlawful, and we assume further, though this may be more debatable, that one result would have been to erase respondent's duty to bargain with IUE. Cf. *Standard Oil Co.* v. *N.L.R.B., supra.* The assumptions do not absolve respondent.

It might be enough at this point to recall and repeat our finding that there was in fact no such agreement among the unions. But we go further and note that the whole subject, despite the eloquent lengths to

which counsel have gone for it, is not more than an irrelevant afterthought.

It is conceded that respondent's single ground for fleeing from the May 4 meeting was the presence of the seven from other unions. But for them, we are assured, respondent's people would have stayed and bargained. With this much conceded, the argument that the eight unions were "locked in" (to refrain from agreeing unless all agreed) becomes immaterial. At least as immaterial as respondent's extended argument that we should draw here upon the learning of conspiracy cases to infer that there was a secret plot to stay "locked in" despite the high assurances to the contrary. For if any of this mattered, respondent's one sticking-point would have been silly. If there was a conspiracy locking the unions in—and a secret one at that—it could plainly have proceeded whether or not outside people sat in on IUE sessions. Indeed, the sinister quality suggested by respondent's theory is actually diluted by the IUE's insistence on having the seven present. Conspirators are normally more conspiratorial. By the same token, if respondent had really been motivated by a belief in a conspiracy, it could scarcely have said, as it still does, that its objections would end with the departure of the seven.

At any rate, despite respondent's perseverance on this point, it was obliterated by respondent's chief witness at the hearing. This witness, respondent's Labor Relations Council, describing in detail the evolution and rationale of the Company's position, acknowledged candidly on the stand that the problem of a possible "lock-in" was at most a future contingency as of May 4, 1966. As he put it:

> * * * A point like that does not really come to fruition in terms of limiting the flexibility of

> the unions until sometime down the bargaining road, and on May 4th we considered it a purely truly anticipatory sort of thing.

That testimony neatly epitomizes the pervasive flaw in respondent's strategy and in its attempted defense against the Board's complaint. The Company's walk-out of May 4, taken in the best possible light, was inexcusably premature. If the IUE was ever to press impermissibly for "multi-union bargaining" or to demonstrate that it was unlawfully "locked in," either or both possibilities could only have materialized "sometime down the bargaining road." Respondent's asserted fears were never put to the test because it stopped and got off the road before the journey started.

A professed certainty that bargaining will become futile or lawless is no substitute for performance of the duty to bargain. Cf. *N.L.R.B.* v. *Sunrise Lumber & Trim Corp.*, 241 F. 2d 620, 624–625 (2d Cir.); *cert. denied*, 355 U.S. 818 (1957): *N.L.R.B.* v. *Jacobs Mfg. Co.*, 196 F. 2d 680, 683 (2d Cir. 1952). Respondent breached that duty on May 4, 1966, and remains in default to this day.

Third, the standards for preliminary injunctions under Section 10(j)

The parties have debated long and instructively the problem of criteria to govern (a) when the Board ought properly to seek a preliminary injunction under Section 10(j), and (b) when, if one is sought, it should be granted.

As to the first question, while the statute is not explicit on this, it seems plain in the scheme of things that the drastic remedy ought to be reserved for situations of special need. The effect of a district court's 10(j) injunction is to order, before the agency has

heard the matter, relief which is normally given only if and when the Board has exercised its primary jurisdiction and persuaded a Court of Appeals to agree with it. Recognizing the extraordinary character of such relief, the Board has in fact sought it only infrequently.

Respondent concludes that the Board is authorized to move under Section 10(j) only when the alleged violation is "flagrant"—apparently using the strong word to mean not only clear, but heinous and aggravated as well. Some occasional statements recorded in print give a semblance of support to this contention. Respondent cites, for example, speeches by individual Board members suggesting "flagrancy" as a standard for resort to Section 10(j). Closer to home, the petition in the instant case alleges that respondent has been guilty of "flagrant unfair labor practices," and it may be, strictly speaking, that this should not have been said unless it was tendered as a material assertion. Furthermore, the Board appears elsewhere to have announced "that it is the policy of the Board not to apply for a temporary injunction under Section [10(j)] unless unusual circumstances exist"—for example, an employer's "patent flouting of the Union's right to bargain collectively * * * without any legal basis" for such recalcitrance. *Reynolds* v. *Herron Yarn Mills,* 53 CCH Lab. Rel. Cases § 11, 347, p. 17, 148 (W.D. Tenn., May 23, 1966).

What emerges, however, is not the kind of straitened test respondent proposes. There is nothing in the language of the statute or its history to support this restrictive view. Though an alleged violation may not fairly be branded "flagrant," the remedy of Section 10(j) is surely appropriate and available when the impact upon the public interest is grave enough to justify swifter corrective action than the

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normal process of Board adjudication and court enforcement. The present case, involving a huge and basic enterprise with substantial impact upon the national defense and the economy generally, seems clearly to qualify.

It should be said, further, that Congress entrusted to the Board as the responsible agency the essential judgement whether the public interest requires the machinery of Section 10(j) be set in motion. Cf. *Labor Board* v. *I. & M. Electric Co.*, 318 U.S. 9, 18–19 (1943); *Guss* v. *Utah Labor Board*, 353 U.S. 1, 8–9 (1957); *Haleston Drug Stores* v. *National Labor Relations Board*, 187 F. 2d 418 (9th Cir.), *cert. denied*, 342 U.S. 815 (1951).[14] To be sure, the Section empowers the district courts "to grant * * * such temporary relief or restraining order *as it deems just and proper*" (emphasis added). And that mandate may be assumed here, at least *arguendo*, to import discretion sufficient to deny relief in routine unfair

[14] It seems desirable—it would surely be helpful—for the Board, after nearly twenty years of work with Section 10(j), to formulate and state in some form more authoritative than random speeches by members the criteria by which it determines whether to proceed under this Section. Such a formulation would guide the public, the courts, the agency itself, and give a measure of assurance that the action taken in individual cases is reasonably principled. This is not the first time, of course, that the Board as well as other agencies have been urged to tackle more widely the hard task of articulating intelligible and knowable rules of general applicability. See, e.g., Friendly, *The Federal Administrative Agencies—The Need for Better Definition of Standards* (1962); Peck, *The Atrophied Rule-Making Power*, 70 Yale L.J. 729 (1961). But it is clear that the Board has broad power to postpone or eschew grand ideals and proceed case by case; respondent has refrained, soundly, from suggesting that the Board erred here because it followed such course. Cf. *Securities & Exchange Comm'n* v. *Chenery Corp.*, 332 U.S. 194 (1947).

labor practice cases for which there is no good reason to short-circuit the normal processes of administrative hearing and judicial review. But cf. *Douds* v. *International Longshoremen's Ass'n*, 242 F. 2d 808, 811–812 (2d Cir. 1957). However that may be, the facts at bar scarcely suggest that the Board abused its own discretion when it concluded that preliminary relief is warranted and desirable in the public interest.[15]

While we have treated as if it were an open question respondent's theory that Section 10(j) is only for "flagrant" cases, the argument is also answered by a long course of judicial decision demonstrating that there is no such test. As the cases have evolved, it has become clear that the district courts are neither to

[15] The court is urgently invited by respondent to "balance the equities." Sufficient reason has been indicated already for declining the invitation; the Congress substantially struck the balance when it wrote Section 10(j), leaving particular implementations mainly for the Board's administrative judgment. Cf. *Douds* v. *International Longshoremen's Ass'n*, 242 F. 2d 808, 811–812 (2d Cir. 1957); *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, 609–610 (1952) (Frankfurter, J., concurring); *Hecht Co.* v. *Bowles*, 321 U.S. 321, 331 (1944). Even if this were not so, however, the balance would not tip for respondent; for the equities are heavily on the side of petitioner. Respondent has violated a basic statutory duty which Congress imposed "to substitute collective bargaining for economic warfare * * *." *Mastro Plastics Corp.* v. *Labor Board*, 350 U.S. 270, 284 (1956), see also *Douds* v. *International Longshoremen's Ass'n*, *supra*, at 282. The injunction petitioner seeks requires only that respondent proceed to bargain. Respondent, reporting vivid fears about the union "coalition," says meeting at a table where the seven intruders are present has to be a step on the road to a company-wide strike rather than littler strikes or none at all. The inexorability of this reasoning has not been demonstrated. There may, in the end, be a strike—even, against hope, a costly one. If there is, it will not be because respondent has proceeded to the bargaining table to test the possibility of agreement and the good faith of the IUE.

demand a showing of "flagrancy" nor to displace the Board's primary decisional authority, but must only determine in a Section 10(j) proceeding whether the Board has "reasonable cause to believe" that the accused party has been guilty of unfair labor practices. *Douds* v. *International Longshoremen's Ass'n*, 241 F. 2d 278, 281 (2d Cir. 1957); *McLeod* v. *Compressed Air, Foundation, Tunnel, Etc., Wkrs.*, 292 F. 2d 358, 359, 361 (2d Cir. 1961). To establish that, the Board, which has yet to make its administrative record, is not required to show more than a "reasonable possibility" that there will be an ultimate determination against the respondent. *McLeod* v. *Local 25, International Bro. of Elec. Wkrs.*, 344 F. 2d 634, 638, 639 (2d Cir. 1965); *Schauffler* v. *Local 1291, Internat'l Longshoremen's Ass'n*, 292 F. 2d 182, 187–188 (3d Cir. 1961); *Brown* v. *Pacific Telephone and Telegraph Co.*, 218 F. 2d 542, 543 (9th Cir. 1955).[16] This much, for reasons already reviewed at length, the petitioner has certainly demonstrated.

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[16] Respondent has relied heavily upon the majority opinion of Judge Marshall in *McLeod* v. *Business Machine & Office App. Mech. Conf. Bd.*, 300 F. 2d 237 (2d Cir. 1962), where the district court's granting of an injunction under Section 10(*l*), not 10(j), was reversed. There, respondent stresses, the Court of Appeals observed that the district court must find not only "reasonable cause" to expect a Board decision that there has been an unfair labor practice, but also "reasonable cause to believe that the Board's decision * * * will be enforced by a Court of Appeals." *Id.* at 242 n. 17. The language, in its context, is not of particular value to respondent. Under Section 10 (*l*), the application for an injunction is mandatory, not discretionary, and is made by a regional officer or attorney without leave or sanction from the Board. Under 10(j), involved here, the Board, in its discretion, decides whether to seek an injunction. In the cited case, the charge and petition for an injunction were thought by the Court of Appeals to be

If it were necessary, the point could be put more strongly. The parties have made a detailed record. Despite respondent's proposed inferences about secret motives and hidden plots, there is little in the way of material dispute concerning the facts. The points of controversy are essentially legal rather than factual. Without meaning to usurp the Board's primary role, but merely to explicate the court's conclusions, it may be said that the decision would go for the petitioner as a matter of indepedent judgment if such a judgment were either required or permissible.

An order will issue restraining the respondent, pending final disposition of the Board's complaint, in accordance with the prayer of the petition. Counsel will settle such an order on notice.

(S) MARVIN E. FRANKEL, U.S.D.J.

AUGUST 18, 1966.

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opposed to existing Board precedent. And the problem, both in the district court and on appeal, was solely one of law.

In that setting, what the appellate court said (though it appears not to have been repeated or cited since) is reconcilable with the standard as it is usually defined. Superficially, there are difficulties of an obvious kind in forecasting what a court of appeals will do in reviewing an administrative ruling not yet delivered. As a practical matter, however, at least where the question is one of law, this can hardly mean more than a judgment by the district court that there is "reasonable cause" to consider the legal position of petitioner correct. And this, however the test is stated, is likely to describe what really happens. A district court, supposedly competent to decide questions of law, might well hesitate to issue an injunction on what it determines are fallacious legal premises.

ORDER OF MARVIN E. FRANKEL, DISTRICT JUDGE

United States District Court for the Southern District of New York

66 Civil 2155

[SAME TITLE]

ORDER GRANTING TEMPORARY INJUNCTION

This cause came on to be heard upon the verified petition of Ivan C. McLeod, Regional Director of the Second Region of the National Labor Relations Board, for a temporary injunction pursuant to Section 10(j) of the National Labor Relations Act, as amended, pending the final disposition of the matters involved pending before the Board, and upon the issuance of an order to show cause why injunctive relief should not be granted as prayed in said petition. The Court, upon consideration of the pleadings, evidence, briefs, argument of counsel, and the entire record in the case, has made its findings of fact and conclusions of law in an opinion filed herein, finding and concluding that there is reasonable cause to believe that respondent has engaged in, and is engaging in, acts and conduct in violation of Section 8(a) (1) and (5) of said Act, affecting commerce within the meaning of Section 2 (6) and (7) of said Act, and that such acts and conduct will likely be continued unless enjoined.

Now, therefore, upon the entire record, it is

ORDERED, ADJUDGED AND DECREED that, pending the final disposition of the matters involved pending before the National Labor Relations Board, General

Electric Company, its officers, representatives, agents, attorneys, and all persons acting in concert or participation with it or them, be and they are hereby enjoined and restrained from:

(a) Failing or refusing to meet, confer and bargain collectively in good faith with International Union of Electrical, Radio and Machine Workers, AFL–CIO (IUE) and its constituent locals, by declining to meet with the selected representatives of IUE and its constituent locals because of the presence of any representatives of other unions whom IUE and its constituent locals have invited to attend for the purpose of participating in the discussion and advising or consulting with IUE and its constituent locals;

(b) Failing or refusing to meet and bargain collectively in good faith with IUE and its constituent locals, upon request, for the purpose of discussing and negotiating various issues pertinent to, and in aid of, collective bargaining negotiations for a new agreement with respondent to succeed the September 26, 1963, agreement; and

(c) Failing or refusing to meet and bargain collectively in good faith with IUE and its constituent locals, upon request, as the exclusive bargaining representatives of the employees in appropriate units as certified by the Board, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Done at New York, New York, this 23rd day of August, 1966.

MARVIN E. FRANKEL,
United States District Judge.

APPENDIX C

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are as follows:

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

* * * * *

SEC. 10. (h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (U.S.C., Supp. VII, title 29, secs. 101–115).

* * * * *

(j) The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

* * * * *

(l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8(b), or section 8(e) or section 8(b)(7), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or

transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further,* That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period: *Provided further,* That such officer or regional attorney shall not apply for any restraining order under section 8(b)(7) if a charge against the employer under section 8(a)(2) has been filed and after the preliminary investigation, he has reasonable cause to believe that such charge is true and that a complaint should issue. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further,* That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8(b)(4)(D).

APPENDIX D

Supreme Court of the United States

No.—. October Term, 1966.

IVAN C. MCLEOD, REGIONAL DIRECTOR OF THE NATIONAL LABOR RELATIONS BOARD FOR THE SECOND REGION, PETITIONER

v.

GENERAL ELECTRIC COMPANY.

[September 21, 1966.]

APPLICATION FOR STAY

Memorandum of MR. JUSTICE HARLAN.

This is an application by the Regional Director of the National Labor Relations Board for the Second Region for a stay, pending certiorari proceedings, of a judgment of the Court of Appeals for the Second Circuit setting aside a temporary injunction issued by the District Court against the General Electric Company under § 10(j) of the National Labor Relations Act, 29 U.S.C. § 160(j) (1964 ed.). Section 10(j) authorizes the Board, upon the issuance of an unfair labor practice complaint, to petition an appropriate United States district court for "such temporary relief or restraining order" as the court "deems just and proper" pending adjudication of the complaint by the Board.

In this case, an administrative complaint was issued alleging that General Electric had violated § 8(a)(1)

and (5) of the Labor Act, 29 U.S.C. § 158(a)(1), (5) (1964 ed.), by refusing to bargain collectively with the International Union of Electrical, Radio and Machine Workers, AFL–CIO (IUE), the certified bargaining agent for certain company employees, over the terms of an agreement to replace an existing contract between the two which expires on October 2, 1966. General Electric's refusal to bargain with IUE was caused by the presence on the Union's bargaining committee of representatives of other unions with which General Electric also has collective bargaining agreements that expire at about the time the IUE agreement terminates. The company contended that their presence at the IUE negotiations constituted an unlawful attempt to impose multi-union company-wide bargaining. Upon authorization by the Labor Board, the Regional Director filed this suit for a § 10(j) injunction.

The District Court, after an evidentiary hearing, held that on the particular facts of this case, (1) the Board had "reasonable cause to believe" that General Electric's refusal to bargain would be held to constitute an unfair labor practice, and (2) the circumstances justified the issuance of a temporary injunction, the effect of which is to require General Electric to bargain with the present IUE committee pending Labor Board resolution of the unfair labor practice charge. The Court of Appeals, filing a written opinion, set aside the injunction, refused the Regional Director's request for a stay of its mandate pending certiorari, and granted General Electric's application that the mandate issue forthwith.

Having carefully considered the papers submitted on both sides, I am of the opinion that petitioner is entitled to a stay on terms indicated below. The underlying issue in this case—the standards govern-

ing the application of § 10(j)—has not heretofore been passed upon by this Court and is of continuing importance in the proper administration of the Labor Act. In light of the District Court's findings of fact, which were not disturbed by the Court of Appeals, petitioner's position as to such standards cannot be deemed insubstantial. See, *e.g., Douds* v. *International Longshoremen's Assn.,* 241 F. 2d 278; *Brown* v. *Pacific Tel. & Tel. Co.,* 218 F. 2d 542; cf. *McLeod* v. *Local 25, Int'l B'h'd of Elec. Workers,* 344 F. 2d 634; *Schauffler* v. *Local 1291, Int'l Longshoremen's Assn.,* 292 F. 2d 182; see in addition *American Radiator & Standard Sanitary Corp.,* 155 N.L.R.B. No. 69, 60 L.R.R.M. 1385, appeal to the Court of Appeals for the Sixth Circuit pending; and *Standard Oil Co.* v. *NLRB,* 322 F. 2d 40. And the competing equities relevant to this application seem to me to tip in favor of some interim relief being granted at this stage. On the other hand I consider that the powers of a single Justice of this Court should be exercised sparingly in the context of this unusual situation.

On these premises I shall stay the execution and enforcement of the judgment of the Court of Appeals but only pending this Court's disposition of petitioner's petition for certiorari, and only on condition that such petition is filed on or before October 24, 1966. If certiorari is denied, this stay shall terminate forthwith. If certiorari is granted, I shall, pursuant to Rule 50(6) of the Rules of this Court, submit to the Court at the time it so votes the application now before me so that it may determine whether a further stay should be granted.

U.S. GOVERNMENT PRINTING OFFICE: 1966